

170524tartikov1 Trial

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 CONGREGATION RABINNICAL COLLEGE
of TARTIKOV, INC., et al.,

4 Plaintiffs,

5 v.

07 Civ. 6304 (KMK)

6 VILLAGE of POMONA, NY, et al.,

7 Defendants.

8 -----x

White Plains Courthouse

White Plains, N.Y.

May 24, 2017

9:40 a.m.

10
11 Before:

12 THE HONORABLE KENNETH M. KARAS,

13 District Judge

14 APPEARANCES

15 JOHN STEPANOVICH

ROMAN STORZER

16 DONNA SOBEL

TERRY RICE

17 PAUL SAVAD

Attorneys for Plaintiffs

18 JOHN PELOSO

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20 Attorneys for Defendants

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Ulman - cross

1 A. Yes, but would also need site plan approval from the
2 planning board.

3 Q. Okay, but it's the Board of Trustees that has the authority
4 to approve the special permit; isn't that true?

5 A. Yes, but a special permit is just another -- a special
6 permit is a -- an additional set of eyes, if you will, on a
7 project of the use of which is approved as an approved use
8 within the Village code.

9 Q. This additional set of eyes that you mention really is the
10 Board of Trustees' authority to approve the special permit,
11 correct?

12 A. To approve the special permit, not the entire project.

13 Q. That's all I asked --

14 A. Yes.

15 Q. -- was whether or not the Board of Trustees --

16 A. Yes, correct.

17 Q. -- can approve the special permit for an educational
18 institution. Okay.

19 Now, petitions for text amendments are regulated by
20 the code; isn't that true?

21 A. By what? I'm sorry.

22 Q. By the code, the Village code.

23 A. Yes.

24 Q. And I believe that's from Section 130-35 through 130-45?

25 A. It's towards the end of the code.

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Ulman - cross

1 Q. Okay. I'm just going to ask you some general questions on
2 that right now. Ms. Ulman, how many text amendments made by
3 petition by residents have been adopted by the Village Board of
4 Trustees?

5 A. I'm not aware of any that have been applied for, so none
6 have been adopted.

7 Q. Okay. Thank you.

8 Now, isn't it true, Ms. Ulman, according to 130-38 of
9 the code that on making of -- on making the motion for a
10 petition for a text amendment, the Board of Trustees may decide
11 not to formally consider that amendment?

12 A. Yes.

13 Q. And there's no requirement that the Board of Trustees
14 decide on a petition for a text amendment within a certain
15 period of time; isn't that true? And I think if I can
16 reference you to 130-42.

17 A. I'm looking at that. No, that -- no, there does not seem
18 to be a time period, a time limit for which the board would be
19 required --

20 Q. That's my question. There's nothing in the code --

21 A. Not that I see; no.

22 Q. -- that indicates a time period in which the board must
23 act?

24 A. No.

25 Q. Ms. Ulman, what is the legal standard of review if the

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Ulman - cross

1 board decides not to adopt a petition for a text amendment?

2 A. What is the legal what?

3 Q. Legal standard of review?

4 A. Of review?

5 Q. Yes, ma'am.

6 A. If the board decides not to?

7 Q. Not to adopt a petition?

8 A. An Article 78 proceeding or a declaratory judgment action.

9 Q. So, Ms. Ulman, isn't it true that the town board is not
10 duty-bound to act on a petitioner's application for a text
11 amendment; isn't that true?

12 A. That's correct.

13 Q. Ms. Ulman, in the event of a petition for a text amendment,
14 isn't it true that residents can voice their opposition to that
15 text amendment?

16 A. The procedure for a -- an amendment to the zoning law,
17 which is what I think you're referring to as a text amendment,
18 is set forth in Chapter -- in Article 11 as you indicated; and
19 that provides for a public hearing to be held by the Board of
20 Trustees on the application, and of course, public hearings are
21 open for public comment, and that's the reason that you hold a
22 public hearing, is to get public comment on the particular
23 application.

24 Q. Ms. Ulman, if I could direct your attention to 130-42,
25 which is procedure upon protest. Do you see that?

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Ulman - cross

1 A. Yes.

2 Q. And my question is that there is a procedure for Village
3 residents to protest the petition for a text amendment; isn't
4 that true?

5 A. Yes.

6 Q. Okay. And what is that procedure?

7 A. The procedure as set forth this seems to be a recitation of
8 the State Section 7-708 of the Village law, the State Village
9 Law, where a petition can be signed by at least 20 percent or
10 more of the area of the land included in such proposed change,
11 or by the owners of 20 percent or more of the land immediately
12 adjacent extending 100 feet from the subject property, or by
13 the owners of 20 percent or more of the land directly opposite
14 thereto extending 100 feet from the street frontage of such
15 opposite land. I was just reading from the Section 130-42.
16 And what it requires is that the Board of Trustees, instead of
17 having the ability to approve the application by a majority,
18 you need a majority plus one, which is four members of the
19 board instead of three.

20 Q. And you anticipated my last question. If that protest
21 would occur by the 20 percent that you just set forth, then the
22 board is required to pass the action by what you would call I
23 think is a supermajority; is that fair?

24 A. Yes.

25 Q. So as you stated, instead of three out of five, it would be

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1 four out of five?

2 A. Right.

3 Q. Now, Ms. Ulman, I want to ask you a few questions about
4 zone change. Your affidavit at paragraph 15 mentions zone
5 changes. And my question, ma'am, is where in the zoning code
6 does it talk about zone changes as you've reflected in your
7 affidavit at paragraph 15?

8 A. That's authorized by the amendment article. An
9 amendment -- a zone change is in the nature of an amendment to
10 the zoning law, because what you're doing is changing the
11 zoning map, and you're -- if you were creating a new zone, you
12 would be including that language within the zoning law as an
13 amendment to the -- to the law itself.

14 Q. So then, if I understand your testimony, then that process
15 would fall under the petition for an amendment; is that true?

16 A. I believe so, yes.

17 Q. How many zones are there in the Village?

18 A. One.

19 Q. Which zone could Tartikov change its property to in order
20 to be allowed?

21 A. They would propose a new zone.

22 Q. So, Tartikov then could not petition for a zone change;
23 isn't that true?

24 A. Well, we call it a zone change. It would be very difficult
25 to call it a zone increase. Zone change covers any -- and this